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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CESAR LOSOYA-CASTREJON,
ARTURO FARIAS-ZEPEDA,
JUAN CESAR VALENCIA-ZEPEDA,
ROBERTO SORIA-CUEVAS,
RICARDO RIVAS ARREDONDO,
JOSE ADAN CHAIDEZ OJEDA, and
JULIO CESAR VARGAS-BIRRUETA,

Defendant.

CASE NO. 1:22-CR-00297-JLT-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: 2/22/2023
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe

BACKGROUND

This case is set for status conference on 2/22/2023. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff

1 and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This, previous, and subsequent
 2 General Orders were entered to address public health concerns related to COVID-19.

3 Although the General Orders address the district-wide health concern, the Supreme Court has
 4 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 5 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 6 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 7 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 8 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 9 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 10 or in writing”).

11 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 12 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 13 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 14 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 15 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 16 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 17 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 18 and the defendant in a speedy trial.” *Id.*

19 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 20 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 21 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 22 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 23 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 24 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 25 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 26 following the September 11, 2001 terrorist attacks and the resultant public emergency).

27 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 28 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-

exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status conference on 2/22/2023.
2. By this stipulation, defendant now moves to continue the status conference until 5/24/2023, and to exclude time between 2/22/2023, and 5/24/2023, under 18 U.S.C. § 3161(h)(7)(A), B(ii) [Local Code T4].
3. The parties agree and stipulate, and request that the Court find the following:
 - a) The government has represented that the discovery associated with this case includes thousands of pages of investigative reports, video, audio recordings, cell phone extractions, and other voluminous materials. A portion of this discovery has been either produced directly to counsel, made available for inspection and copying, or is being processed for supplemental discovery.
 - b) Counsel for defendants desire additional time to consult with their clients, review

1 the voluminous discovery, conduct independent investigation, and pursue a potential pretrial
2 resolution of the case.

3 c) Counsel for defendants believe that failure to grant the above-requested
4 continuance would deny him/her the reasonable time necessary for effective preparation, taking
5 into account the exercise of due diligence.

6 d) The government does not object to the continuance.

7 e) Based on the above-stated findings, the ends of justice served by continuing the
8 case as requested outweigh the interest of the public and the defendant in a trial within the
9 original date prescribed by the Speedy Trial Act.

10 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
11 et seq., within which trial must commence, the time period of 2/22/2023 to 5/24/2023, inclusive,
12 is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(ii) [Local Code T4] because it is
13 so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the
14 existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation
15 for pretrial proceedings or for the trial itself within the time limits established by this section.

16 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
17 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
18 must commence.

19 IT IS SO STIPULATED.

20
21 Date: February 7, 2023

PHILLIP A. TALBERT
United States Attorney

22
23 /s/ Antonio J. Pataca
ANTONIO J. PATACA
Assistant United States Attorney

24
25 Date: February 7, 2023

26 /s/ Peter Jones
PETER JONES
27 Counsel for Defendant
CESAR LOSOYA-CASTREJON
28

1 Date: February 7, 2023

/s/ David Torres

DAVID TORRES

Counsel for Defendant

ARTURO FARIAS-ZEPEDA

3 Date: February 7, 2023

/s/ Serita Rios

SERITA RIOS

Counsel for Defendant

JUAN CESAR VALENCIA-ZEPEDA

7 Date: February 7, 2023

/s/ Victor Chavez

VICTOR CHAVEZ

Counsel for Defendant

ROBERTO SORIA-CUEVAS

12 Date: February 7, 2023

/s/ Mark King

MARK KING

Counsel for Defendant

RICARDO RIVAS-ARREDONDO

15 Date: February 7, 2023

/s/ Patrick Aguirre

PATRICK AGUIRRE

Counsel for Defendant

JOSE ADAN CHAIDEZ-OJEDA

19 Date: February 7, 2023

/s/ Melissa Baloian

MELISSA BALOIAN

Counsel for Defendant

JULIO CESAR VARGAS-BIRRUETA

ORDER

IT IS SO ORDERED that the status conference is continued from February 22, 2023, to **May 24, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(ii).

IT IS SO ORDERED.

Dated: **February 15, 2023**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE